IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

PETN,UNDER ARBITRATION ACT. No 44 of 1999

with

PETN,UNDER ARBITRATION ACT. No 43 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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NAVINCHANDRA G. PATEL

Versus

THE PRESIDENT, DAHEGAM NAGARPALIKA

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Appearance:

1. PETN,UNDER ARBITRATION ACT. No. 44 of 1999
MR JV BHAIRAVIA for Petitioner
MR YV SHAH for Respondent No. 1

2. PETN,UNDER ARBITRATION ACT.No 43 of 1999
MR JV BHAIRAVIA for Petitioner
MR YV SHAH for Respondent No. 1

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CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 18/08/2000

CAV JUDGEMENT

This is a petition under Section 11 of the Cooperative and Conciliation Act, 1996 seeking a reference of the dispute to Arbitrator in terms of the alleged existence of an arbitration clause in the agreement for a civil construction work entered into between the petitioner - contractor and the respondent Dahegam Nagarpalika.

2. The case of the contractor is that he submitted a tender for construction work of 5 latrines on the tender invited by the respondent Municipal Council. A work order was issued in his favour dated 18.3.1996 signed by the President of the Municipal Council. The stipulated period of completion of contract was 3 months. The site of work was however not made available to the contractor and therefore he could not undertake the contract. The contractor has raised a dispute and claimed damages in different amounts on different heads for loss of profit, payment of salary, staff, advance payment for material, refund of security deposit, loss of interest and various other expenses incurred for starting work.

3. For seeking reference reliance is placed in clause 30 of the Standard Form B-1 maintained by the Council for inviting work on tender.

4. The Municipal Council has opposed the application mainly on 2 grounds, firstly, it is urged by the Learned Counsel appearing on its behalf that the contract has not been executed by the Prescribed Officer i.e. Chief Municipal officer for and on behalf of the Municipal Council in accordance with Section 65(4) & in the mode laid down in Section 66 of the Gujarat Municipalities Act, 1963. It is submitted that, therefore, there does not exist any enforceable valid contract between the Municipal Council and the present contractor. Any contract entered into by the President of the Municipal Council is not binding on the Municipal Council as expressly laid down in Section 65(5) of the Gujarat Municipalities Act, 1963. The second ground urged is that there is no document or writing which makes applicable clause 30 in the standard form B-1 as a part of the contract. Alternatively, it is submitted that under the alleged arbitration clause 30 of the standard tender form, only certain disputes of specified categories alone are referrable that too not to any arbitrator to be chosen by the parties and to be appointed under the Act but to the Arbitration Tribunal of the Gujarat State constituted under the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act, 1992

(Gujarat Act No.IV of 1992).

5. On the above preliminary objections taken on behalf of the Municipal Council, I granted repeated opportunities to the Counsel for the petitioner to specify as to whether the claims and the disputes raised by him fall in any of the specified categories of disputes in clause 30. Despite repeated opportunities, the contractor has failed to specify any of the disputes raised by him are covered by categories of disputes specified in clause 30.

6. After perusing the record and hearing the Learned Counsel for the parties, in my opinion there are reasons more than one for rejecting this application for reference.

7. Learned Counsel for the Municipal Council appears to be perfectly justified in submitting that the letter sent by the then President of the Municipal Council expressing acceptance of tender on behalf of the Municipal Council does not constitute a valid and binding contract between the contractor and the Municipal Council. The relevant provisions contained in Section 65(4), 65(5) and Section 66 are read as under:-

Section 65(4):

In a municipality - Execution of contracts on behalf of municipality:-

a. every contract under or for any purpose of this Act shall be made on behalf of the municipality by the Chief Officer;

b. no such contract for any purpose which the Chief Officer is not empowered by this Act to carry out without approval or sanction of some other municipal authority, shall be made by him until or unless such approval or sanction has first of all been duly given;

c. no contract which will involve an expenditure exceeding one thousand rupees shall be made by the Chief Officer unless otherwise authorised in this behalf by the municipality except with the approval or sanction of the committee concerned;

d. every contract made by the Chief Officer

involving an expenditure exceeding five hundred rupees and not exceeding one thousand rupees shall be reported by him, within fifteen days after the same has been made, to the committee concerned;

e. the foregoing provisions of this section shall apply to every variation or discharge of a contract to the same extent as to an original contract.

Section 65(5):

No contract shall be binding on a municipality unless the requirements of this section have been complied with.

Section 66:

Mode of executing contracts :

1. Every contract entered into in such manner and form as would bind such Chief Officer is such contract were on his own behalf, and may in the like manner and form be varied or discharged:

Provided that:-

a. where any such contract, if entered into by a Chief Officer, would required to be under seal, the same shall be sealed with the common seal of the municipality;

b. every contract for the execution of any work for the supply of any materials or goods which will involve an expenditure exceeding one thousand rupees, shall be in writing and shall be sealed with the common seal of the municipality and shall specify the work to be done or the materials or goods to be supplied, as the case may be, the price to be paid for such work, materials or goods and in the case of a contract for work, the time or times within which the same or specified portions

thereof shall be completed.

2. The common seal of the municipality shall not be affixed to any contract or other instrument except in the presence of two Councillors who shall attach their signatures to the contract or instrument in token that the same was sealed in their presence. The signature of the said councillors, shall be distinct from the signature of any witnesses to the execution of any such contract or instrument.

3. A contract not executed in the manner provided in this section shall not be binding on the municipality.

8. From the above provisions, it is clear that a contract which is not executed in the prescribed mode in accordance with Section 66 and not signed & sealed for & on behalf of Municipal Council by its Chief Officer is not binding on the Municipality as provided by Section 65(5) and 66(3) of the Gujarat Municipalities Act, 1960.

9. The other ground for which this application deserves to be rejected is that clause 30, which is stated to be an arbitration clause, is not incorporated in any formal valid agreement executed between the parties. The said clause 30 in its opening part reads as under:-

Clause 30: Settlement of Disputes and Arbitration : The disputes relating to this contract, so far as they relate to any of the following matters, whether such disputes arise during the progress of the work or after the completion or abandonment thereof, shall be referred to the Arbitration Tribunal, Gujarat State, Gandhinagar.

Namely:

i. ....
ii. ....
iii. ....
iv. ....
v. ....

vi. ....
vii. ....

A reading of the above clause shows that the agreement is for reference of disputes of specified nature to the Arbitration Tribunal. There is no agreement for reference of dispute to any arbitrator other than the Tribunal. So far as the Tribunal is concerned, reference cannot be made by this Court under Section 11 of the Arbitration & Conciliation Act. For taking a dispute to the Arbitration Tribunal the powers of that Tribunal are required to be invoked under the provisions of Gujarat Public Works Conracts Disputes Arbitration Tribunal Act, 1992 (Gujarat Act No.IV of 1992).

10. The jurisdiction of the Tribunal is limited to the disputes of specified nature and in relation to specified works-contract to be notified by the State Government. I am told by the Counsel at the Bar that the disputes pertaining to the works contract with Municipal Council or Local Authorities have not been notified to confer jurisdiction in that regard on the Arbitration Tribunal. The arbitration clause 30, therefore, as contained in the standard tender form, is unworkable. Such a clause cannot be read as an arbitration clause to seek reference or dispute to any arbitrator other than the Tribunal.

11. As mentioned above, I repeatedly granted time to the contractor to specify whether any of the disputes raised by him are covered by any of the categories of disputes mentioned in subclause (i) to (viii) of clause 30. The contractor has not been able to give any specifications as required. Even if that be so, as I have held that there is no enforceable valid contract existing between the parties and the alleged arbitration clause 30 is unworkable, it is not possible to make any reference of the dispute to any arbitrator. It is settled that dispute regarding existence of an arbitration clause is also within the jurisdiction of arbitrator under Section 16 of the Arbitration Tribunal and Counciliation Act but as held by the Supreme Court in Wellington Associates Vs. Mr.Kirit Mehta reported in J.T. 2000 (4) SC 135 - the Chief Justice, while acting under Section 11 of the Act may decline to make a reference where prima facie he finds that no arbitration clause exists and the dispute is not referrable.

12. For the aforesaid reasons, the present application under Section 11 of the Act is rejected with

liberty to the petitioner-contractor to approach the appropriate regular Court with his claims, in accordance with law.

(D.M.Dharmadhikari, CJ)

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